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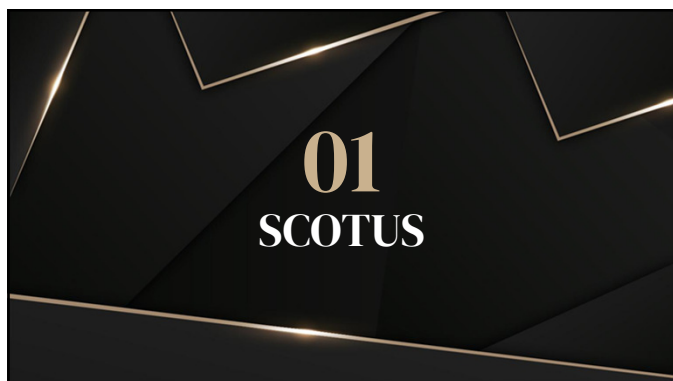
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## Tsarnaev v. United States

Tsarnaev and his brother detonated two homemade pressure cooker bombs near the finishing line of the Boston Marathon, killing three and injuring hundreds. He was sentenced to death for his role in the bombing.

The US Court of Appeals for the First Circuit threw out his death sentences on the grounds that the district court should have asked potential jurors what media coverage they had seen about the case and that the district court should not have excluded sentencing phase evidence that Tsarnaev's brother was involved in a separate triple homicide.

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## Tsarnaev (cont.)

Question presented: Did the U.S. Court of Appeals for the First Circuit err in vacating the death sentence for the district court's failure to ask prospective jurors for a specific accounting of the pretrial media coverage they had seen, heard, or read, and for its exclusion of evidence at the sentencing phase of trial that Tsarnaev's brother had been involved in different crimes two years before the bombing?

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## Tsarnaev (cont.).

The district court did not abuse its discretion during jury selection. The district court has substantial discretion, and it was reasonable for the court to conclude that the proposed question wrongly emphasized what a juror knew before coming to court rather than revealing any potential bias.

The "supervisory authority" of federal courts does not allow them to "create prophylactic supervisory rules that circumvent or supplement legal standards" established by the Supreme Court.

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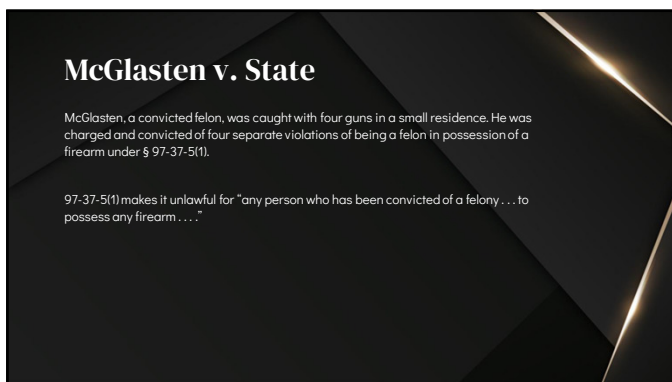
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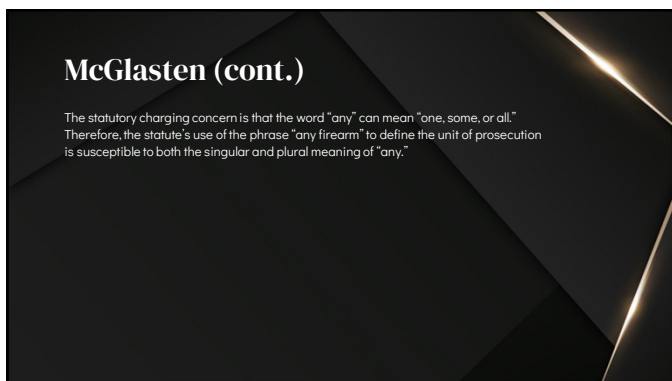
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## McGlasten (cont.).

Note: There was some push in the legislature this session to amend the language to make separate charges clear. See SB 2042. It died in committee.

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## Augustine v. State (Feb 20, 2022).

A witness denied giving a statement to police. In rebuttal, the State called a police officer, who was allowed to testify that a statement was given as well as give the contents of that statement.

The Court of Appeals reversed Augustine's conviction, concluding that the prior statement was admissible for impeachment purposes but that the *contents* of that statement was inadmissible hearsay. *Augustine v. State* (Miss. Ct. App. Dec. 15, 2020).

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## Augustine (cont.)

The supreme court, however, reversed this Court, holding that it was not error for the police officer to be called to rebut a witness's denial of giving a statement; and it was not error to admit the contents of that statement.

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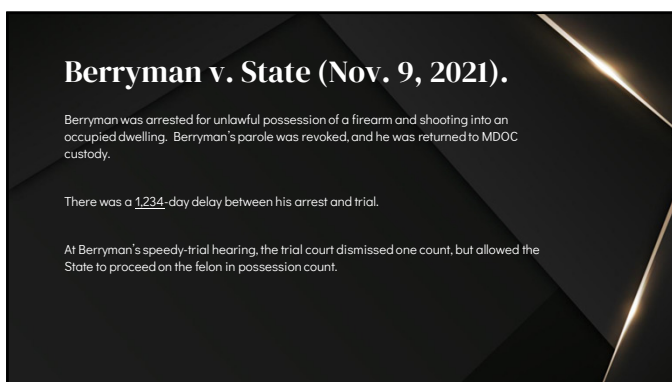
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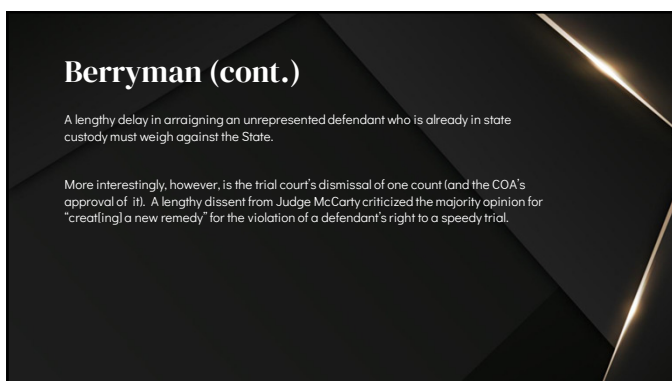
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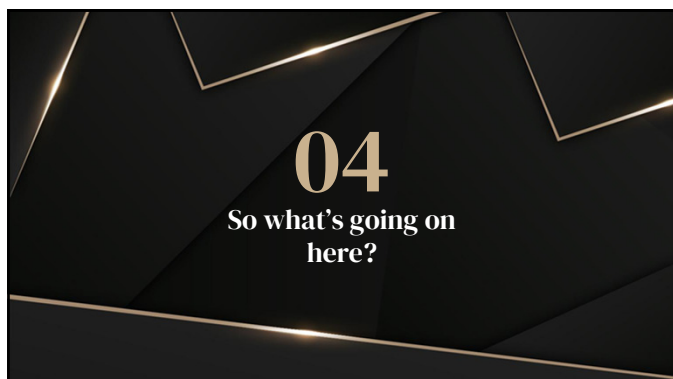
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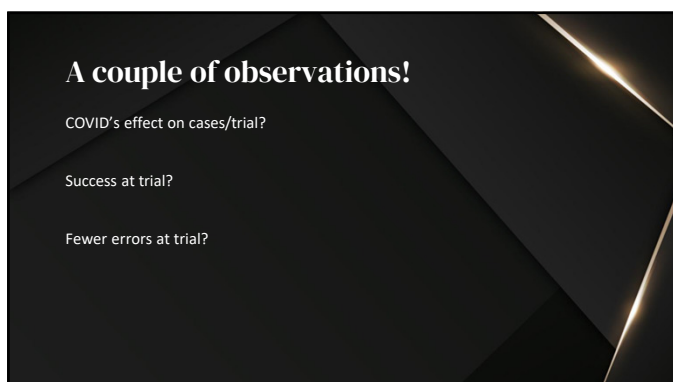
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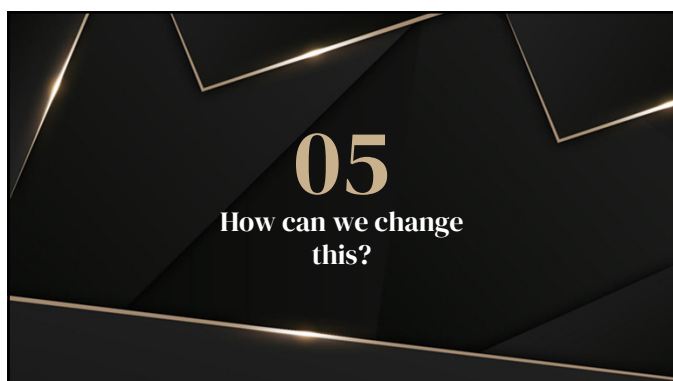
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## Areas where we can improve.

*Batson* – Trial courts are routinely skipping the third step in *Batson*. The *Batson* analysis is not over once the State gives its race-neutral reason.

"[W]hen—as here—the party offers a valid race-neutral reason, the trial judge must allow the strike unless the other party demonstrates that the valid race-neutral reason was a pretext for discrimination." *Hardison v. State*, 94 So. 3d 1092 (Miss. 2012).

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## Evidentiary Issues



Hearsay



Authentication



404(b)

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Proffer!

The Appellate Courts need to know what suppressed evidence is.

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